Supreme Court, U.S.
FILED
SEP 23 1983
ALEXANDER L. STEVAS
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ORIGINAL

82-2079

NO. _____

IN THE SUPREME COURT OF THE

UNITED STATES

RECEIVED
SEP 23 1983
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SUPREME COURT, U.S.

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner,

V.

CHRIS PRINCE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

OF

CHRIS PRINCE

BY

G. WAYNE ASHBEE, Esquire
Two Office Park
Suite 110
Mobile, Alabama 36609
(205) 343-6455

ATTORNEY FOR RESPONDENT

QUESTION PRESENTED

WHETHER THE ALABAMA COURT OF CRIMINAL APPEALS IN THE OPINION BELOW CORRECTLY FOLLOWED THIS HONORABLE COURT'S DECISION OF ASHE V. SWENSON, 397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 (1970), IN ITS EXAMINATION OF THE RECORD, BY TAKING INTO ACCOUNT THE PLEADINGS, EVIDENCE, CHARGE, AND OTHER RELEVANT MATTER.

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OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama reversing and rendering Respondent Prince's conviction is reported as follows:

Prince v. State, 431 So.2d 565 (Cr. App. Ala., 1983)

The order of the Supreme Court of Alabama denying the Writ of Certiorari in this case is reported as follows:

Ex parte State of Alabama; In re Prince v. State, 431 So.2d 568 (S.Ct. Ala., 1983)

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, which reads as follows:

> "No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Emphasis supplied)

2. Section one of the Fourteenth Amendment to the Constitution of the United States which reads as follows:

> "...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws..."

STATUTORY PROVISIONS INVOLVED

Respondent Prince was charged with and acquitted of rape under Title 13A-6-61(a)(1), Code of Alabama, 1975, which reads as follows:

> "§13A-6-61. Rape in the first degree.
>
> ..."(a) A male commits the crime of rape in the first degree if:
>
> (1) He engages in sexual intercourse with a female by forcible compulsion;..." (See Petitioner's Appendix "C", page 24).

At issue in this case is whether that acquittal of rape barred a prosecution and conviction for robbery under Title 13A, Section 13A-8-43(a), Code of Alabama, 1975, which reads as follows:

> §13A-8-43. Robbery in the third degree.
>
> (a) A person commits the crime of robbery in the third degree if in the course of committing a theft he:
>
> (1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or
>
> (2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property. (See Petitioner's Appendix "C", page 28).

STATEMENT OF THE CASE

On July 6, 1981, the Grand Jury of Mobile County, Alabama, issued three (3) indictments against the Respondent, Chris Prince, charging that he committed the following:

> CC-81-1576
> That the defendant did, in the course of committing a theft of an automobile, the approximate aggregate value of said automobile being unknown to the Grand Jury, a theft of lawful currency of the United States of America of the approximate aggregate value of $70.00, the specific denominations of said currency being unknown to the Grand Jury, the property of Barbara Ann Bensman, used force against the person of Barbara Ann Bensman, with intent to overcome her physical power of resistance, while the said Chris Prince was armed with a deadly weapon, to-wit: a gun, in violation of 13A-8-41 of the Alabama Code;
>
> CC-81-1577
> That the defendant, Chris Prince, did abduct Barbara Ann Bensman with intent to inflict physical injury upon her, or to violate or abuse her sexually, in violation of 13A-6-43(a)(11);
>
> CC-81-1578
> That Chris Prince, a male, did engage in sexual intercourse with Barbara Ann Bensman, female, by forcible compulsion, in violation of Sec. 13A-6-61, of the Code of Alabama.

On December 1 and December 2, 1981, the Respondent was tried in the Circuit Court for Mobile County, Alabama, before the Honorable Judge Joseph Hocklander, for the indictment of rape (CC-81-1578).

That on December 2, 1981, the jury returned a verdict of not guilty as charged in the rape indictment.

Thereafter, the State announced that it was going to try Chris Prince for the indictment of robbery in the first degree (CC-81-1576). On January 19, 1982, the Respondent's attorney filed a motion to dismiss under the

1189, 25 L.Ed.2d 469 (1970), and United States v. Griggs, 651 F.2d 396 (5th Cir. 1981), alleging that the issue of the ultimate fact of the Respondent's identity had been finally determined by the trial of the rape indictment (CC-81-1578), by a valid and final judgment in favor of the Respondent, and that this issue cannot again be litigated in the trial of the robbery indictment (CC-81-1576), or the kidnapping indictment (CC-81-1577).

On January 25, 1982, in open court, the Respondent's motion to dismiss was argued before the Court and the Court denied the motion. The trial of the robbery indictment against Chris Prince was set for February 1, 1982.

After the jury was empaneled and sworn for the trial of the robbery indictment, the Respondent's attorney renewed the motion to dismiss based upon a plea of autrefois acquit as originally filed on January 19, 1982, in its entirety. The Court ruled that there was no former jeopardy in the case, and denied the motion to dismiss.

On February 2, 1982, the Respondent was found guilty of robbery in the third degree by the jury, and was sentenced to imprisonment by the Court in the penitentiary for ten (10) years. On the same date, oral notice of appeal was given, and the Court appointed Mr. G. Wayne Ashbee, a licensed attorney, to represent the Respondent on his appeal in this case. On the same date, the Court ordered a transcript of the testimony to be prepared, filed with the Clerk of the Circuit Court for Mobile County, Alabama, said transcript to be paid by the State.

The facts of this case, as found by the Alabama Court of Criminal Appeals in its opinion in the case of Prince v. State, 431 So.2d 565 (Cr.App.Ala. 1982), are sufficient for the purpose of the Respondent's Brief in Opposition to the Petition. (See Petitioner's Appendix A).

SUMMARY OF ARGUMENT

The decision of the Alabama Court of Criminal Appeals in the case below[1] was in accordance with Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), and that body of law that has extended the doctrine of collateral estoppel to cover the facts in this case. There is no question of law at issue that justifies the grant of a writ of certiorari here. The Alabama Court of Criminal Appeals has strictly followed the admonition of Ashe, supra, that requires a reviewing court to examine the record of the proceedings, "taking into account the pleadings, evidence, charge, and other relevant matter...and determines whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration..." (Ashe v. Swenson, 397 U.S. 436, 444, 25 L.Ed.2d 469, 475-476, 90 S.Ct. 1189 [1970]).

1> See Appendix A, to the Petitioner's Appendix.

ARGUMENT

The legal principles which govern the decision here have been well established by the United States Supreme Court, the Federal Courts of Appeals, and the Alabama Appellate Courts for many years. See Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970); United States v. Griggs, 651 F.2d 396 (5th Cir. 1981); and White v. State, 378 So.2d 239 (Ala.Cr.App. 1979).

Petitioner seeks to have this case reviewed because of an alleged conflict with this Honorable Court's decision in Ashe, supra. (Petition at page 39). The Petitioner asserts that "in determining what were the issues in the rape trial, the Alabama Courts did not look beyond the defense evidence. The Court of Criminal Appeals of Alabama did not even have before it the pleadings in the rape case..." (Petition at page 41).

This is absolutely astounding and is untrue. The Court of Criminal Appeals of Alabama had before it the complete transcript of the record of the rape case and reviewed that record in its decision.[2] The Respondent's Appendix A to this Brief is a certified copy of the docket sheet of that Mobile County Clerk's Office showing that the transcript of the rape case (CC-81-1578) was prepared by the Court Reporter and was mailed by the Clerks' office to the Court of Criminal Appeals on May 6, 1982. Respondent's Appendix B is the cost bill filed by the Clerk's office in connection with case number CC-81-1578. As further corroboration of the fact that the record of the rape trial (CC-81-1578) was before the Court of

---

[2] The Petitioner on page 8 of the Petition again makes the mistake that the record contains no pleadings from the rape trial, which is incorrect. The Petitioner admits on the same page, however, that a plea of not guilty is taken for granted in the case since the Respondent was tried and acquitted for rape.

the Petition beginning at page 22, where the Petitioner reviews the evidence from the transcript of the rape trial and refers to the pages of that transcript, e.g. "(D.Ex.R. 20-R.22)." The previous quoted example is a reference to the Respondent's attorney's designation of the "Defendant" as "D". Further, the Respondent's attorney below referred to the transcript of the rape trial as "Exhibit" or "Ex." in the Brief filed below, in order to distinquish the references to the transcript of the rape trial, from the reference to the transcript of the robbery trial. The Petitioner has followed this mode of designation in its Petition.

The Petitioner continues in its Petition to say that the Court's treatment of the evidence was grossly harmful. (Petition at page 41).[3] There is absolutely no basis for this statement, since the Court of Criminal Appeals of Alabama reviewed the entire transcript of the rape trial and the robbery trial, and set-out at length the evidence adduced at the trial of the rape case. The Court then simply summarized the evidence adduced at the robbery trial. See Petitioner's Exhibit A, at page 9. The basis, or seemingly so, for the Petitioner's argument in this regard is that very simply put, had the Court of Criminal Appeals reviewed the evidence in its entirety, it would have reversed the case not on collateral estoppel grounds, but because the evidence was not sufficient to have convicted the Respondent in the first place! This is preposterous, and one can only marvel at the extent of the

---

3> After the Alabama Court of Criminal Appeals' decision in the case below, the Petitioner filed an Application for a Rehearing and a Motion for the Court of Criminal Appeals to find additional facts under Rule 39 (k), Alabama Rules of Appellate Procedure. This Application and the Motion were denied. See Petitioner's Appendix A, p.14.

Petitioner's ingenuity in trying the Respondent for rape, and then, having lost the trial, arguing on appeal that the evidence was insufficient to have ever tried him in the first place.

In reviewing the Petition, the attorney for the Respondent has counted in seventeen separate places where the Petitioner has referred to its own evidence of rape at the trial as either insufficient, not making out a prima facie case, a weak case, or not proving the corpus delecti of rape. If the Petitioner's case against the Respondent was so weak as it contends in this Petition, one might question the ethics of a prosecutor who continues to prosecute a defendant when that prosecutor knows his case is "insufficient as a matter of law", as the Petitioner refers to the case seventeen times in its Petition.

The Petitioner says on page 42 of the Petition that "...the weakness of the State's evidence as to the corpus delecti of rape should have been examined by the Appellate Court." The truth is that the Court of Criminal Appeals was called upon by the Petitioner on appeal to review the transcript of both cases as to the sufficiency of the evidence, and in its brief on Application for Rehearing to the Alabama Court of Criminal Appeals, the Petitioner argued that there were alternative grounds for the jury's decision in the rape trial. See Respondent's Appendix C.

Moreover, in the Respondent's Motion to Dismiss filed with the Trial Court on January 19, 1982, based upon the grounds of collateral estoppel, appeared the following statement:

> 3. That the prosecution, during the proceedings of the trial (the rape trial) did present much testimony concerning the elements of rape, and in fact, proved each of the elements of rape through expert testimony and through the testimony of the victim in this matter, Ms. Barbara Ann Bensam.

> 5. That the defense, in the trial of this matter, was that the defendant had been mistakenly identified by the victim as the perpetrator of the rape, and consequently, of each of the other charges, to-wit, robbery; thus, the only issue for resolution in the trial of this case (the rape case) was whether, in fact, the Defendant, Chris Prince, committed the acts of which the victim complained.
>
> 7. That under the authority of Ashe v. Swenson, 397 U.S. 90 S.Ct. 1189 25 L.Ed.2d 469 (1970), and United States v. Griggs, 651 F.2d 396 (5th Cir. 1981), this Court is required to examine the record of the prior proceeding, CC-81-1578 (the rape case), taking into account, the pleadings, evidence, charge, and other relevant matters, in order to determine whether a rational jury could have grounded its verdict upon an issue other than that which the Defendant seeks to foreclose from consideration in the trial of CC-81-1576 and CC-81-1577.
>
> (See Respondent's Appendix D)

Thus, the Respondent brought to the Court's attention as early as the trial level, that it had to follow the mandate of Ashe, in reviewing the record of the case in making a determination as to any issue resolved in a previous trial.

Also, as a part of the record in this case, on appeal to the Alabama Court of Criminal Appeals and the Alabama Supreme Court, was the opening and closing arguments of the prosecutor and defense counsel. The Court of Criminal Appeals reviewed those arguments and in its opinion said:

> The Appellant in this case conceded at both trials that the victim had been kidnapped, raped, and robbed. Therefore, "identity" was the only controverted issue.
>
> (Petitioner's Appendix A at page 13).

In addition, the Court of Criminal Appeals in its opinion stated that:

> Appellant, in summation, essentially conceded that the victim had been kidnapped, raped and robbed. His sole contention was that he was not the perpetrator of these crimes. He contended that the victim's blurred vision and the bad lighting conditions led to her mis-identification...Since the Appellant conceded that the victim had been raped, the only issue left for the jury, an issue which the jury decided in Appellant's favor, was the validity of Appellant's identification. In other words, the jury found that the Appellant was not the man who raped the victim.
>
> (Petitioner's Appendix A at page 8-9).

Thus, the Court of Criminal Appeals in its decision in the case below, reviewed the entire transcript of both the rape trial and the robbery trial, including opening and closing arguments, and found, based upon that review, that the only issue was one of identity. Obviously, there could be no other issue since the Respondent conceded, as found by the Court of Criminal Appeals, that the victim had been raped.

There is no conflict between the case below, and Ashe, supra, or any other decision of this Honorable Court. The Court of Criminal Appeals reviewed the entire record and made a finding in favor of Respondent. That is all it is required to do under Ashe, and that is what the Court of Criminal Appeals did. There is simply no conceivable, rational issue other than identity upon which the jury's verdict in the case below could have been grounded.

The Petitioner has sought to obfuscate the true issue in the Petition, by citing numerous examples of speculative induction as to why the jury decided to acquit the Respondent in the rape case. The only fact that is important in this Petition is that the Respondent conceded the rape of the victim, and told the jury he was not

the one who did it! There is simply no way to get around that fact. After all, how can a defendant who pleads alibi, deny that the crime took place when he was not in the vicinity at the time of the crime? The Petitioner has no logical response to this question.

The Petitioner cites examples of why its own evidence at the trial of the rape case was insufficient. Even if this were true, it is beside the point and has no relevance in this Petition. We must not lose sight of Rule 17.1.(c), which mandates that in a petition for a writ of certiorari, the petitioner must show why there are special and important reasons for the grant of the writ and in particular the petitioner must show that there is an important question of federal law decided by a state court which in a way conflicts with applicable decisions of this Honorable Court. The Petitioner says that the Alabama Court of Criminal Appeals failed to follow the mandate of Ashe in not reviewing the record of the rape and the robbery cases. This Honorable Court need only read the decision of the Alabama Court of Criminal Appeals in the case below, wherein the Court of Criminal Appeals sets out the evidence from the rape case and the robbery case and the issues involved in those cases and the concession of the rape by the Respondent, to readily see that the Petitioner's argument is refuted at the outset.

There is much, much more that the Respondent could say in response to the Petitioner's lengthy, obfuscated, and irrelevant argument in its Petition. There is, however, no need to do so, since the Petitioner has failed to meet the criteria for the grant of a writ of certiorari.

CONCLUSION

Under the authorities previously cited, a state court could not legally try a defendant for an offense allegedly occurring at the same time and place as another offense for which the defendant has been tried and acquitted.

The Trial Court below erred on January 25, 1982, when it denied the Respondent's Motion to Dismiss based upon collateral estoppel. The Respondent should not have been put to trial for the crime of robbery, since he had previously been acquitted by a jury after the rape trial, when the ultimate fact of the Respondent's identification was found in his favor by that jury.

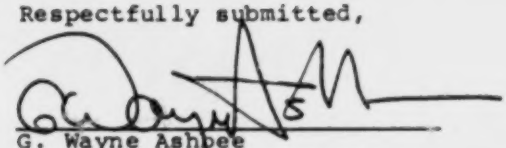
On the appeal of the Respondent's robbery conviction, the Alabama Court of Criminal Appeals reviewed, pursuant to the mandate of Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), the pleadings, evidence, charge, and other relevant matters, in order to determine whether a rational jury could have grounded its verdict upon an issue other than that of identity. The Court of Criminal Appeals found in favor of the Respondent and reversed and rendered the decision of the trial in the robbery conviction.

The Respondent has been twice put in jeopardy in violation of the Fifth Amendment to the United States Constitution which provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb."

The decision of the Alabama Court of Criminal Appeals, and the Affirmance of the Alabama Supreme Court, in reversing and rendering the Trial Court below, was correct, as determined by the law of Alabama and the law

of the United States of America, and the Petition filed herein is due to be denied.

Respectfully submitted,

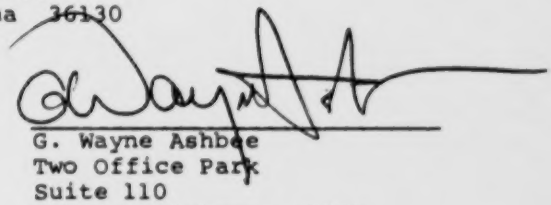


G. Wayne Ashbee
Attorney for Respondent,
Christopher Jerome Prince

CERTIFICATE OF SERVICE

I, G. Wayne Ashbee, Attorney for Respondent, Christopher Jerome Prince, do hereby certify that on this 21st day of September, 1983, I did serve the requisite number of copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari on the office of the Assistant Attorney General of Alabama, one of the Attorneys for the State of Alabama, Petitioner, by mailing same to him, first class postage prepaid and addressed as follows:

Joseph G. L. Marston, III
Assistant Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130



G. Wayne Ashbee
Two Office Park
Suite 110
Mobile, Alabama 36609
(205) 343-6455

AFFIDAVIT OF MAILING

I, G. Wayne Ashbee, do hereby certify that I did on this 21st day of September, 1983, deposit in the United States Mail, one copy each of the following documents:

1. Motion for Leave to Proceed in Forma Pauperis,

2. Affidavit to Accompany Motion for Leave to Proceed in Forma Pauperis,

3. Brief in Opposition to Petition for a Writ of Certiorari, and

4. Appendix to Brief in Opposition to Petition for a Writ of Certiorari.

The above documents were mailed first class postage prepaid by me and addressed as follows:

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

G. Wayne Ashbee

Sworn to and Subscribed
before me on this 21
day of September, 1983.

Notary Public

ORIGINAL

Supreme Court, U.S.
FILED
23 19
ALEXANDER L. STEVAS
CLERK

82-2079

NO. _____

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner,

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CHRIS PRINCE,

Respondent.

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

OF

CHRIS PRINCE

BY

G. WAYNE ASHBEE, Esquire
Two Office Park
Suite 110
Mobile, Alabama 36609
(205) 343-6455

ATTORNEY FOR RESPONDENT

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STATE OF ALABAMA,:

COUNTY OF MOBILE.:

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do hereby certify that the two (2) pages attached are true, correct and accurate copies of the Docket sheets (page one and three) in the case of State of Alabama vs. Chris Prince, as the same remains of record in my office,

Witness my hand this the 19th day of September, 1983.

Maurice W Castle Jr

Clerk of the Circuit Court
of Mobile County, Alabama

BS 4/5/81 BS 4/17/81 KC 1/25/82 KC 2/1/82 KC 2/4/82 MAS 2-2-82

Deft. has case nos. CC81-1576 thru CC81-1578

~~SULLIVAN~~ Mashburn ~~HACKLANDER~~ BYRD

State of Alabama
Supreme Court
Dept. of Court Mgmt.
FORM SC-C-8 1/77

CASE ACTION SUMMARY —CRIMINAL—

TRIAL JUDGE:

Case Number: CC 81-1576 (ID YR NUMBER)

IN THE ~~CIRCUIT~~ COURT OF MOBILE COUNTY

XX FEL ☐ MISD.
XX JURY ☐ NON JURY
☐ MUNICIPAL CASE

COURT INFORMATION ☐ DIST ☐ CIR

DEFENDANT	CHRIS PRINCE
OFFENSE (CHARGE)	ROBBERY, FIRST DEGREE §13-8-41
DEFENSE ATTORNEY	1. ~~Thomas Doyle~~ STATUS: X RET, ☐ APP
	2. Wayne Ashbee STATUS: ☐ RET, X APP
DISTRICT ATTORNEY	Galanos
PERSONAL HISTORY OF DEFENDANT	
ADDRESS	
CASE NUMBER	(ID YR NUMBER)
DATE FILED (DOCKETED)	JUL 6 1981
GRAND JURY #	51
DATE OF INDICT	JUL 6 1981
LOWER COURT CASE NUMBER	DC 81 30987
XX MALE ☐ FEMALE	☐ WHITE XX BLACK ☐ OTHER
DOB:	8/9/61
OCCUPATION:	
HEALTH:	
STATE ID NO.	002015J

	DATE ISSUED	DATE COM TO JAIL
WARRANT	4/13/81	4/11/81
Rel.	-------	
BOND	AMOUNT	DATE RELEASED
INITIAL APPEARANCE	DATE 4/15/81	
PRELIMINARY HEARING	DATE 4/28/81 ☐ WAIVED	
JAIL DEFENDANT STATUS	☐ PERS. BOND ☐ PROF. BOND ☐ PERS. RECOG. XX IN COUNTY/CITY JAIL ☐ IN PRISON	
ARRESTING OFFICER	☐ COUNTY ☐ CONSERVATION ☐ STATE ☐ MUN.	

TRIAL SET FOR: 7/27/81 ~~8/5/81~~ 8/5/81 10/7/81 11/30/81 1/25/82 2/1/82 (Dates)

7/24/81 Arr. & Y/O.

Arr: 9/4/81

LCC:91.00

DATE	BENCH NOTES, ORDERS, JUDGMENTS, ACTIONS, MINUTES, ETC., RECORD OF:
7/24/81	Re-set for arraignment and trial July 27th, 1981.
7/27/81	Defendant waived reading of indictment and plead not guilty Trial set for August 3rd, 1981. Attorney, Thomas Doyle, in court.
7/31/81	Attorney Tom Doyle allowed to withdraw as attorney for the defendant - Mr. Wayne Ashbee, Attorney-at-Law, appointed to represent the defendant in this case - Case ordered taken out of the call fo August 3rd, 1981, and re-set for August 5th, 1981. 53-
8/5/81	Order of July 27th, 1981 is hereby set aside.
8/5/81	Defendant waived trial by jury, - Defendant requested to be treated as a Youthful Offender. Investigation ordered made to determine if defendant should be treared as a Youthful Offender - Re-set fpr September 4th, 1981, for Youthful Offender Report - Report to be made by Emily Jones. Defendant's attorney, Wayne Ashbee, in court. J.D.A. 53-

COURT RECORD — DEFENDANT INDEX — COURT CALENDAR

Deft. has case nos.
CC81-1576 thru CC81-1578

Date	Page No. 3 ACTIONS (Continued)	Case Number
		CC 81-1576 (ID YR NUMBER)
2/2/82	Jury and verdict of guilty of ROBBERY THIRD DEGREE AS CHARGED IN THE INDICTMENT -	
JURY POLLED	Adjudged guilty of ROBBERY THIRD DEGREE - Sentenced to imprisonmen in the Penitentiary for Ten (10) years -	
	Notice of Appeal without suspension of sentence pending appeal -	
	Defendant allowed credit of 9 months and 22 days for time spent in jail -	
F 26 F26	Defendant's attorney, Wayne Ashbee, in court.	
M 31 M30	A P P E A L E D	
A 6 A 0	LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS BY TRIAL CLERK AND NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS MAILED FEBRUARY 2nd, 1982.	
63 56		
2/2/82	Mr. Wayne Ashbee, Attorney-at-Law, appointed to represent the defendant on his appeal to the Court of Criminal Appeals.	
2/2/82	Mrs. Kathy Cashman, Official Court Reporter, is hereby ordered to transcribe testimony and proceedings has at the trial of this case and to file transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State.	
	Motion For Preparation of Trial Transcript filed by Defendant's attorney, Wayne Ashbee February 24th, 1982.	
3/2/82	Motion for Preparation of Trial Transcript filed by Attorney, February 24th, 19 Granted - Mrs. Kathy Cashman, Official Court Reporter, is hereby ordered to transcribe testimony and proceedings had at the trial of case no. CC81- 1578, and to file transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State.	
4/2/82	TRANSCRIPT MAILED TO THE COURT OR CRIMINAL APPEALS	
4/2/82	COPY OF TRANSCRIPT MAILED TO ATTORNEY GENERAL OFFICE	
5/6/82	Defendant's exhibits mailed to Court of Criminal Appeals.	
12/29/82	Copy of Opinion received from Court of Criminal Appeals - Reversed and Rendered. Judgment not final.	

Appendix B

STATE OF ALABAMA,:

COUNTY OF MOBILE.:

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do Hereby certify that the attached is a true, correct and accurate copy of the Cost bill in the case of State of Alabama vs Chris Prince, as the same remains of record in my office.

Witness my hand this the 19th day of September, 1983.

Maurice W Castle Jr

Clerk of the Circuit Court
of Mobile County, Alabama.

THIRTEENTH JUDICIAL CIRCUIT
STATE OF ALABAMA
JOSEPH M. HOCKLANDER, PRESIDING JUDGE
COUNTY COURTHOUSE, MOBILE, ALABAMA 36602
(205) 690-8457

KATHY ELLIOTT
OFFICIAL COURT REPORTER

DEBRA GUNTER
SECRETARY

THOMAS P. MARTIN
BAILIFF

March 30, 1982

State of Alabama
Department of Finance
State Comptroller
Montgomery, Alabama 36130

STATE OF ALABAMA

v. CC-81-1578

CHRIS PRINCE

Original $298.65

Kathy Cashman

Kathy Cashman
Court Reporter
Courtroom No. 7

5

STATE OF ALABAMA)
COUNTY OF MOBILE)

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do hereby certify that Mrs. Kathy Cashman, an Official Court Reporter of the Circuit Court of Mobile County, Alabama, was on the 2nd day of March, 19 82, ordered and directed by the Trial Judge to transcribe and prepare a transcript of the testimony and all other proceedings had at the trial of Case No. CC81-1578, State of Alabama Versus Chris Prince, Defendant, and

I do further certify that said Official Court Reporter did transcribe and prepare a transcript of the testimony and all other proceedings in said case, and did file the original ~~and xxxxxxxxxx copies~~ of said transcript in this office with the undersigned as Clerk of this Court on the 30th day of March, 19 82.

Witness my hand and the official seal of this Court on the 30th day of March, 19 82.

(SEAL)

Maurice W. Castle, Jr.
Maurice W. Castle, Jr., Clerk, Circuit Court, Mobile County, Alabama

(Note: Attach the Statement of the Court REPORTER for Court Reporter's Fees for transcribing and preparing the Transcript hereto and Mail to: State Comptroller, State of Alabama, Montgomery, Alabama. 36101

Appendix C

FEB 17 1983

FIRST DIVISION NUMBER 371

S.C. _____

IN THE SUPREME COURT OF ALABAMA

EX PARTE: STATE OF ALABAMA

EX REL: ATTORNEY GENERAL

IN RE: CHRIS PRINCE,
APPELLANT-RESPONDENT

VS.

STATE OF ALABAMA,
APPELLEE-PETITIONER.

APPEALED FROM THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

ON APPLICATION FOR WRIT OF CERTIORARI TO THE
ALABAMA COURT OF CRIMINAL APPEALS

CHARLES A. GRADDICK
ATTORNEY GENERAL

AND

JAMES F. HAMPTON
SPECIAL ASSISTANT ATTORNEY GENERAL

J. ANTHONY MCLAIN
SPECIAL ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR THE APPELLEE

McLain & Hampton
567 South Hull Street
Montgomery, AL 36104
(205) 262-0336

Court's opinion wherein it is stated that the defendant conceded the rape and robbery of the victim. Further, any such concession in no way comes into consideration when applying the law to make a determination as to whether or not the Constitutional prohibition attaches to this defendant.

The State would submit that the court's finding that the only issue for the trier of fact was one of identification is only one of several interpretations which can be given the jury verdict. Other interpretations of the verdict illustrate the inapplicability of Ashe to this case. A viable theory is that the facts presented to the jury at the rape trial failed to establish rape. Could not the jury have considered the testimony of all involved, accepted the fact that there had been sexual intercourse but rejected the theory or belief of the victim that she had been raped? The case could have also fallen had the prosecution not proven venue. Illustrations of other reasons for the jury acquitting the defendant on the rape charge could go on and on. However, this argument is to the effect that availability of such other interpretations negate the court's holding that the only issue for the trier of fact was one of identification. The State would argue that while the trial court jury could have considered and believed the victim's testimony that she was robbed, they could all together reject any notion of rape or forced sexual intercourse of the victim. Again, there were other issues before the jury for their decision other than that of identification. In essence, the State would argue that the issue for the trier of fact was not identification, but whether the State had proven each essential element of the two separate

and distinct crimes.

Finally, the State would submit that it is the province of the trial court jury to make a determination as to whether or not a defendant is guilty of the crime charged. Where there is a defense of alibi such as in the case at bar, and affirmative testimony of a victim of a crime that the defendant was the perpetrator of the crime against her, such an issue should be submitted to the rational trier of fact. To invade this province of the jury on appeal, violates an area of justice and law which has been preserved for the trier of fact. The State would therefore argue that the jury's exercise of this Constitutional responsibility and duty should not have been usurped by the Honorable Court below.

Therefore this petition should be granted and an order issued affirming the conviction of the defendant.

CONCLUSION

Based on the foregoing the State respectfully asks that this Honorable Court grant the Writ of Certiorari and the conviction of the Appellant be affirmed.

Respectfully submitted,

Charles A. Graddick

CHARLES A. GRADDICK
ATTORNEY GENERAL

James F. Hampton

JAMES F. HAMPTON
SPECIAL ASSISTANT ATTORNEY GENERAL

IN THE CIRCUIT COURT FOR MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,	*	CRIMINAL DIVISION
Plaintiff,	*	
vs.	*	
CHRISTOPHER JEROME PRINCE,	*	CC-81-1576 CC-81-1577
Defendant.	*	

MOTION TO DISMISS (PLEA OF AUTREFOIS ACQUIT)

Comes now the Defendant, Christopher Jerome Prince, and says as follows:

1. That the Defendant was indicted by the Grand Jury of Mobile County, Alabama, for three (3) separate offenses, to-wit:

> CC-81-1576 - That the Defendant did, in the course of committing a theft of an automobile, the approximate aggregate value of said automobile being unknown to the Grand Jury, of theft of lawful currency of the United States of America of the approximate aggregate value of $70.00, the specific denominations of said currency being unknown to the Grand Jury, the property of Barbara Ann Bensman, use force against the person of Barbara Ann Bensman, with intent to overcome her physical resistance of physical power of resistance, while the said Chris Prince was armed with a deadly weapon, to-wit: a gun, in violation of 13A-8-41 of the Alabama Code;
>
> CC-81-1577 - That the Defendant, Chris Prince, did abduct Barbara Ann Bensman with intent to inflict physical injury upon her, or to violate or abuse her sexually, in violation of 13A-6-43(a)(11);
>
> CC-81-1578 - That Chris Prince, a male, did engage in sexual intercourse with Barbara Ann Bensman, female, by forcible compulsion, in violation of Sec. 13A-6-61, of the Code of Alabama.

2. That on December 1 and December 2, 1981, the Defendant was tried in the Circuit Court for Mobile County, Alabama, before the Honorable Judge Joseph Hocklander, for charge No. CC-81-1578 (Rape).

3. That the prosecution, during the proceedings of the trial, did present much testimony concerning the elements of rape, and in fact, prove each of the elements of rape through expert testimony and through the testimony of the victim in this matter, Ms. Barbara Ann Bensman.

4. That during the trial of this matter, the prosecution also proved that the victim was robbed during the course of the rape of lawful currency of the United States of America of the approximate value of $70.00, which was in her purse at the time of the robbery; that the prosecution, during the course of this matter, also proved that the victim was abducted against her will by a person intending to inflict physical injury upon her, from her place of residence, and transported to another part of the City of Mobile, where she was raped.

5. That the defense, in the trial of this matter, was that the Defendant had been mistakenly identified by the victim as the perpetrator of the rape, and consequently, of each of the other charges, to-wit, kidnapping and robbery; thus, the only issue for resolution by the jury in the trial of this case was whether, in fact, the Defendant, Christopher Jerome Prince, committed the acts of which the victim complained.

6. That the issue of the ultimate fact of the Defendant's identity has been determined in the trial of CC-81-1578 (Rape), by a valid and final judgment in favor of the Defendant, and that this issue cannot again be litigated in the trial of CC-81-1576 and CC-81-1577.

7. That under the authority of Ashe v. Swenson, 397 U.S. 436, 90 S.C. 1189, 25 L.Ed.2nd 469 (1970), and United States v. Griggs, 651 F.2d 396 (5th Cir. 1981), this Court is required to examine the record of the prior proceeding, CC-81-1578, taking into account the pleadings, evidence, charge, and other relevant matters, in order to determine whether a rational jury could have grounded its verdict upon an issue other than that which the Defendant seeks to foreclose from consideration

in the trial of CC-81-1576 and CC-81-1577.

WHEREFORE, the Defendant respectfully requests this Court to continue the trial of CC-81-1576 and CC-81-1577, previously set on January 25, 1982, until such time as this Court has complied with the requirements of Ashe and Griggs, supra; further, the Defendant is without funds to pay for the preparation of a transcript of the trial proceeding CC-81-1578, and therefore respectfully requests this Court to order the State to prepare the same on behalf of the Defendant for the use of the Defendant's attorney in the preparation of a brief and argument before this Court pursuant to this Motion to Dismiss.

G. WAYNE ASHBEE
Attorney for Defendant
800 Downtowner Blvd.
Suite 111
Mobile, Alabama 36609

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON
JAN 19 9 49 AM '82
CLERK

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of JAN, 1982, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail properly addressed, and first class postage prepaid.

NO. [illegible]

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner,

V.

CHRIS PRINCE,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent, Christopher Jerome Prince, moves this Honorable Court for an Order permitting him to proceed in this Court, in forma pauperis, in response to a Petition for Writ of Certiorari from the decision of the Supreme Court of Alabama, entered in this cause on April 29, 1983, pursuant to the provisions of Title 28, United States Code, Section 1915, and Rule 46 of the rules of this Court, and in support thereof attached the Affidavit of the attorney of said Respondent.

G. Wayne Ashbee
Attorney for Respondent,
Christopher Jerome Prince

Two Office Park
Suite 110
Mobile, Alabama 36609
(205) 343-6455

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 21st day of September, 1983, served a copy of the foregoing pleading on the office of Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, by mailing the same to him, first class postage prepaid by me.

G. Wayne Ashbee

82-2079

SEP 23 1983

NO. ORIGINAL

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER, 1982

STATE OF ALABAMA,

Petitioner,

V.

CHRIS PRINCE,

Respondent.

AFFIDAVIT TO ACCOMPANY MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

I, G. Wayne Ashbee, being first duly sworn, depose and say that on July 29, 1981, I was appointed by the Honorable Joseph Hocklander to represent the Respondent, Christopher Jerome Prince, in the trial of indictments number CC-81-1576, 1577 and 1578, in the Circuit Court of Mobile County, Alabama.

1. I was appointed by the Circuit Court of Mobile County, Alabama, to represent the Respondent because the Respondent was unable to financially afford an attorney to represent him at the trial of any of these indictments. (See Request/Appointment/Acceptance of Attorney attached hereto).

2. That after the Respondent's trial and conviction of robbery, 3rd degree, pursuant to indictment CC-81-1576, the Court entered an Order appointing G. Wayne Ashbee on appeal to the Court of Criminal Appeals of the State of Alabama due to the Respondent's indigency. (See Order appointing attorney on appeal attached hereto). In addition, the trial court on February 2, 1982, entered an Order for the Court Reporter to prepare and file a

transcript to be paid for by the State of Alabama. (See Order to the Court Reporter to prepare and file transcript attached hereto).

3. That since the time of his indictment, the Respondent has been incarcerated in the prison system of the State of Alabama and is not presently employed, and the Respondent's attorney is informed by the Respondent that he has not received in tha: entire period of time any income from a business, profession or other form of self employment, or any income in the form of rent payments, interest, dividends, or any other source.

4. That the attorney for the Respondent, is informed by the Respondent that he has no cash, checking or savings accounts, and that he does not own any real estate, stocks, bonds, notes, automobiles, or other valuable property.

5. Further, the Respondent is without funds to pay the costs of prosecuting the merits of his case in response to the Petition.

6. That the Code of Alabama, Section 15-12-22 (1975) limits the amount to be paid for indigency appeals to $1000.00, and that there is no provision for a fee in excess of this amount.

7. That the $1000.00 limit has been met and exceeded, in connection with the appeal in the Respondent's case, and on August 2, 1983, the State of Alabama denied my request for funds in excess of $1000.00 to prosecute the Respondent's opposition to the Petition for Writ of Certiorari to this Honorable Court. (See letters of G. Wayne Ashbee and the Honorable William M. Bowen, Jr., attached).

I understand that a false statement in this affidavit will subject me to penalties for perjury.

G. Wayne Ashbee

Sworn to and Subscribed
before me on this 21
day of September, 1983.

Glenda Dunkard
Notary Public

OCT 12 RECD

REQUEST/APPOINTMENT/ACCEPTANCE OF ATTORNEY

Case Number: CC 81 1576 1579

COUNTY

Defendant CHAS A PRINCE

10-9-81 /Christopher Prince
Signature

Bank Copy Available

ORDER APPOINTING ATTORNEY ON APPEAL

TUESDAY, FEBRUARY 2nd, 1982

State of Alabama	)	Robbery, Third Degree -
Mashburn -vs- CC-81-1576	)	
Chris Prince	)	Order appointing attorney on appeal to the Court of Criminal
(Black Male - Age)	)	Appeals.

This day in open court came the State of Alabama by its District Attorney and thereupon in open court on this lay; It is ordered and adjudged by the court that Mr. Wayne Ashbee, Attorney-at-Law, be and he is hereby appointed to represent the defendant on this appeal to the Court of Criminal Appeals.

ORDER COURT REPORTER TO PREPARE AND FILE TRANSCRIPT OF TESTIMONY

TUESDAY, FEBRUARY 2nd, 1982

State of Alabama	)	Robbery, Third Degree -
Mashburn -vs- CC-81-1576	)	
Chris Prince	)	Court Reporter ordered to prepare and file Transcript, to be
(Black Male - Age)	)	paid by the State.

This day in open court came the State of Alabama by its District Attorney, and thereupon in open court on this day; Mrs. Kathy Cashman, Official Court Reporter, is hereby ordered to transcribe testimony and proceedings had at the trial of this case and to file Transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State.

July 19, 1983

Honorable John Tyson
Judge
Court of Criminal Appeals
Post Office Box 351
Montgomery, Alabama 36101

Re: State of Alabama vs.
Chris Prince

Dear Judge:

I am writing to you to see if there is any way that I might receive additional compensation for the handling of an appointed case.

The State of Alabama has petitioned the United States Supreme Court for a Writ of Certiorari, pursuant to which I will have to file a responsive brief, and if certiorari is granted, a brief on the merits. A review of the hours I have spent on the appeal of the case to the Alabama courts, indicates that I have already exhausted the one thousand dollar fee limit for the handling of such an appeal.

Do you know if there is any way I might obtain special approval for additional compensation for the handling of this case to the United States Supreme Court, since it is the State of Alabama that has petitioned for certiorari to the United States Supreme Court, it seems to me that it should be the State of Alabama that should have to pay my fee.

In any event, I did not know who else to write to concerning this matter, but if you know someone to whom I should address this question, I would appreciate your telling me.

With best personal regards, I remain,

Yours very truly,

G. Wayne Ashbee

GWA/dl

William M. Bowen, Jr.
Presiding Judge, Alabama Court of Criminal Appeals
P. O. Box 351
Montgomery, Alabama 36101

August 2, 1983

Honorable G. Wayne Ashbee
Suite 110
Two Office Park
Mobile, Alabama 36609

Dear Mr. Ashbee:

Judge Tyson asked me to reply to your letter of July 19, 1983, with regard to additional compensation in the case of State v. Chris Prince. Unfortunately, Alabama Code Section 15-12-22 (1975) has no provision for a fee in excess of $1,000.00.

I understand your position but know of no authority to authorize your request. If I can help you in any way, please call.

With personal regards, I am,

Sincerely,

Bill Bowen

William M. Bowen, Jr.
Presiding Judge

WMBJr/sdm